UNITED NATIONS

AT

Administrative Tribunal

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29 June 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 599

Case No. 626: BERNADEL

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Hubert Thierry;

Whereas, on 17 October 1991, Anne-Marie Bernadel, a staff member of the United Nations filed an application requesting the Tribunal:

"(a) to find that the Respondent failed to take proper action to rectify my concern in respect of not taking into account the level of functions which I performed from October 1988 to August 1991;

(b) to find that the Respondent erred in its failure to reconsider my case notwithstanding my continual requests to that effect;

(c) to find and declare that the functions which I discharged in regard to the Yearbook were of a higher level since in other departments [they are] discharged by professionals;

(d) to find and decide that I have suffered emotional strain and stress as a result of the action of the Respondent;

(e) to find and decide that I have lost out in terms of seniority and monetary remuneration that I should have been entitled to had my post been classified higher;

(f) to find and decide that I am entitled to immediate upgrading of my present G-5 status to a professional level, and so order;

(g) to decide that I am entitled to general damages in the amount of money to be determined by the Tribunal taking into account the above-mentioned emotional distress and financial loss."

Whereas, on 16 January 1992, the Applicant submitted an additional document;

Whereas the Respondent filed his answer on 24 January 1992;

Whereas, on 29 October 1992, the Tribunal requested the Respondent to provide the Applicant "with the analysis by the Compensation and Classification Service referred to in each case as one of the elements considered by NYGSCARC [New York General Service Classification Appeals and Review Committee] in making its recommendations on the level of the posts";

Whereas, on the same date, the Tribunal put further questions to the Applicant and asked her "to advise the Tribunal whether there is any further information that ... she wishes to be considered, which deals exclusively with the above analysis and the nature of the duties and responsibilities of the post, as set forth in the job descriptions to which that analysis was directed";

Whereas, on 3 November 1992, the Respondent submitted to the Tribunal the documentation requested and the Applicant, on 9 November 1992, provided her comments thereon, together with replies to the questions put by the Tribunal;

Whereas, on 9 November 1992, the Applicant submitted an additional document;

Whereas, on 20 November 1992, the Executive Secretary of the Tribunal informed the parties that the Tribunal had decided to adjourn consideration of the case until its 1993 Spring session;

Whereas the facts in the case are as follows:

Anne-Marie Bernadel entered the service of the United Nations on 30 April 1979, on a three month fixed-term appointment at the GS-3, step I level, as a Clerk-Typist in the Treaty Section of the Office of Legal Affairs. She served on further fixed-term

appointments and on 13 August 1979, was transferred to the Department of Political Affairs, Trusteeship and Decolonization. On 1 August 1980, she was granted a probationary appointment and on 1 May 1981, a permanent appointment. The Applicant was promoted to the GS-4 level, with effect from 1 April 1982.

In July 1982, the International Civil Service Commission approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

On 13 June 1984, the Assistant Secretary-General, Office of Personnel Services (OPS) announced to the staff, in information circular ST/IC/84/45, the establishment of the Classification Review Group "to review the overall results of the classification exercise currently being undertaken in respect of posts in the General Service and related categories in New York".

On 28 April 1986, the Assistant Secretary-General, OPS, informed the staff in information circular ST/IC/86/27, "of the action taken with respect to the classification exercise for posts in the General Service ... categories at United Nations Headquarters and to outline future action, in particular with respect to the implementation of the results of the exercise and the related appeals procedure." NYGSCARC was established with effect from 16 May 1986, to hear appeals against the results of the classification exercise.

On 25 November 1986, the Applicant signed the administrative form P-270, containing a new job description, certified by her supervisor, the Chief of the Editorial Unit and by the Executive Officer, to be submitted for the classification of her post.

The Applicant's post having been classified at the GS-5 level, in a memorandum dated 29 October 1987, the Applicant, appealed the initial classification of her post, stating that the functions of the post were classified at the wrong level. She

argued that the complexity of the functions she discharged "may not have been correctly judged" and expanded on the post's responsibilities.

The Assistant Secretary-General for the Office of Human Resources Management (OHRM[1/]), submitted the Applicant's case to NYGSCARC for advice on the basis of information circular ST/IC/86/27 Annex II, and Addenda 1 and 5, requiring review by the Classification Service. NYGSCARC reviewed the case and, at its seventh meeting, held on 7 March 1989, confirmed the classification of the post at the GS-5 level. The Assistant Secretary-General, OHRM, approved this recommendation and informed the Applicant of his decision in a memorandum dated 11 September 1989. The Applicant was promoted to the GS-5, step III level, with retroactive effect from 1 July 1985, as a Social Sciences Assistant.

On 29 September 1989, the Applicant wrote to the Assistant Secretary-General, OHRM, requesting review of the classification of her post, arguing "that the responsibility bestowed upon me by the functions that I am assuming may not have been fully recognized". In a reply dated 20 November 1989, the Assistant Secretary-General, OHRM, informed the Applicant that since her appeal and all material related thereto had been reviewed by NYGSCARC, "my decision, based on the recommendation of NYGSCARC, to establish the classification of the post at the GS-5 level is, therefore, final."

In a letter dated 10 January 1990, the Applicant, pursuant to staff rule 111.2, requested the Secretary-General to review the administrative decision to classify her post at the GS-5 level. In a reply dated 16 March 1990, the Director, Staff Administration and Training Division, OHRM, informed the Applicant that NYGSCARC would again review her case and the Assistant Secretary-General for OHRM would take a decision on her case in the light of NYGSCARC'S findings and recommendation.

1/ Successor of OPS.

NYGSCARC reviewed the appeal at its tenth meeting on 26 April 1990. Its findings and recommendation adopted on 7 June 1990, read as follows:

"Findings

7. The New York General Service Classification Appeals and Review Committee reviewed the appeal... Based upon its review of the job description, the information provided by the appellant in her memoranda of appeal and related attachments, the analysis provided by the Compensation and Classification Service which confirmed the classification decision, the Committee concluded that the functions of the post corresponded to the GS-5 level depicted in the General Service Classification Standards.

Recommendation

8. Accordingly, the Committee recommends that the post be maintained at the GS-5 level."

In a memorandum dated 25 June 1990, the Assistant Secretary-General, OHRM, informed the Applicant that he had approved the recommendation by NYGSCARC "to maintain the level post of the post at the GS-5 level." He also stated that if she was "still dissatisfied with the decision taken after reviewing these findings, the Secretary-General will agree to the direct submission of your application to the Administrative Tribunal."

On 17 October 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The post which the Applicant encumbered was incorrectly classified and she is entitled to damages for loss and emotional strain resulting therefrom.

2. The Applicant is entitled to a "personal promotion" because of the professional functions that she performed.

Whereas the Respondent's principal contention is:

The Respondent's discretionary decision with regard to the classification of the Applicant's post was properly taken following an independent review by a specialized appeals body.

The Tribunal, having deliberated from 7 June to 29 June 1993, now pronounces the following judgement:

I. The Applicant challenges the decision dated 25 June 1990, by the Respondent, adopting a recommendation dated 7 June 1990, by the New York General Service Classification Appeals and Review Committee (NYGSCARC) which rejected the Applicant's classification appeal and found that her post was properly classified at the GS-5 level. The Applicant claims that the Respondent failed to take into account the level of functions she performed from October 1988 to August 1991, that the Respondent failed to reconsider her case despite continual requests to do so, and that the functions she discharged in regard to the Yearbook warranted a higher level. In consequence, the Applicant claims improper loss of seniority and entitlement to up-grading to the Professional level and to damages.

II. In a letter dated 25 June 1990, the Respondent agreed to direct submission of the application to the Tribunal.

However, the Respondent's answer notes that the Applicant, in addition to her earlier appeal, also seeks to appeal a decision of the Officer-in-Charge of the Compensation and Classification Service dated 8 August 1991, based on submissions made by the Applicant subsequent to 25 June 1990. The 8 August 1991 decision confirmed the earlier decision by rejecting allegedly new material submitted by the Applicant. The Respondent points out that there has been no consent to direct submission of an appeal from the 8 August 1991 decision. Therefore, the Tribunal finds that this matter is not properly before it, under article 7.1 of the Tribunal's Statute.

III. The issues that are properly before the Tribunal are similar to those presented to the Tribunal in Judgement No. 541, Ibarria (1991). In Ibarria, the Tribunal recalled its jurisprudence in Judgement No. 396, Waldegrave (1987), in paragraph XV of which the Tribunal held:

> "It is not the function of the Tribunal to substitute its judgement for that of the Secretary-General in job classification matters. This would be so even if the Tribunal had the required expertise in this area - which it does not. For the most part, the arguments advanced on behalf of the Applicant seek to have the Tribunal determine independently how it would classify the post in question, but this is not the role of the Tribunal. It is instead the function of the Tribunal to determine whether, under all the circumstances, the Respondent has acted within his reasonable discretion ..."

The same principle governs this case. The Applicant's contentions are aimed largely at persuading the Tribunal that the content of the Applicant's post is such that it should be classified at a higher level. As indicated above, however, the Tribunal will not enter into an evaluation of the elements of the Applicant's job description.

IV. As in Ibarria, the Tribunal's concern is with matters such as a denial of due process, if the staff member neither sees nor has an opportunity to comment on documentation sent by the Service in charge of classification to NYGSCARC.

V. It appears that a significant memorandum, dated 24 October 1988, submitted by the Deputy Chief, Compensation and Classification Service and a fact sheet dated 24 April 1990, prepared by the Compensation and Classification Service, both of which were presented to NYGSCARC and on which NYGSCARC relied in its recommendation to the Respondent were not made available to the Applicant. She, therefore, had no opportunity to submit material she deemed relevant with regard to them. Nevertheless, in the

course of this appeal, those documents were subsequently made available to the Applicant by a memorandum dated 30 October 1992, through the Tribunal, and she was provided an opportunity to submit material she deemed relevant with regard to them, which she did, in a memorandum dated 9 November 1992.

VI. In that memorandum, the Applicant makes essentially two points relevant to the appeal before the Tribunal. First, she notes that an audit report she requested and which the Tribunal directed the Respondent to produce, if it existed, was not furnished. She says that, if it had been, it would have made a decisive difference in the case. However, it appears that no audit report as such was ever prepared. The memorandum dated 24 October 1988, referred to above, was based, inter alia, on information obtained during the job audit. Although it is regrettable that an audit report was not prepared, the classification analysis dated 24 October 1988, appears to describe in a sufficiently informative manner the pertinent elements of the job. In the circumstances, the Tribunal is unable to conclude that the absence of a written audit report warrants a remand of this case.

The second point made by the Applicant is that her supervisor was not consulted. The Applicant refers to her present supervisor in this regard. The 24 October 1988 memorandum points out that the Applicant's former supervisor, who was acting as such at the pertinent time, was consulted and that a change in duties which occurred since March 1986, was not relevant to the appeal. Accordingly, the Tribunal is unable to find that the classification process was flawed on this account.

VII. Inasmuch as the procedural flaw identified in paragraph V above was corrected by the Applicant's submission of her 9 November 1992 memorandum and as that memorandum added nothing of significance that had not previously been before NYGSCARC, the Tribunal does not consider that the procedural flaw caused any injury to the Applicant.

VIII. For the reasons set forth in paragraph II above, the Tribunal makes no determination as to the Applicant's substantive contentions regarding the proper level at which her post should be classified. That was for the Respondent to determine, in the exercise of his reasonable discretion, based on such appropriate analysis and advice from NYGSCARC as he wished to rely upon. In this case, as in Ibarria, the Tribunal is satisfied that the Respondent acted within his reasonable discretion. Nothing in the Applicant's memorandum dated 9 November 1992, warrants reconsideration by NYGSCARC of its recommendation dated 7 June 1990.

IX. For the foregoing reasons, the application is rejected.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Hubert THIERRY
Member

Geneva, 29 June 1993

R. Maria VICIEN-MILBURN
Executive Secretary